IN THE HIGH COURT OF UTTARANCHAL, AT NAINITAL

Criminal Revision No. 709/2001
(Old No. 718/1985)

Jan Mohammad and others ……Revisionists.

Versus

1. Shabbir S/o Allahdia
2. State ……Respondents..

Hon. Irshad Hussain, J.

Heard Sri Dinesh Chauhan learned counsel for the revisionists and learned A.G.A. for State.

This is a criminal revision under Section 397/401 of the Code of Criminal Procedure, 1973 (for short 'Code') against the judgment and order dated 1.2.1985 passed by the then Sessions Judge, Almora, whereby the conviction of the revisionists under Section 147/323 IPC was affirmed. The learned Magistrate, Almora had, instead of passing a sentence of imprisonment, given benefit of the provisions of the First Offenders Act to the revisionists and they were let off after executing the required bonds for keeping peace for the period for which the bond was executed. The order had already complied with.

The learned counsel submitted that the allegation of the complainant that the incident took place on 15.7.1983 stand belied by the fact that the learned Munsif Magistrate had acquitted the accused under Section 160 of the IPC in criminal case no. 109/84 and therefore the revisionists could not have been held guilty and convicted by the same Magistrate and on complaint case initiated by the complainant respondent no.1. The submission of the learned counsel has no force because the acquittal was recorded in the proceedings for offence under Section 160 of the IPC due to the fact that it was not a case of affray resulting from the quarrel from both the sides. However in the incident one of the party was the assailant and that was the reason that the proceedings were terminated in favour of the prosecution. From the said order under Section 160 IPC the revisionists cannot take any benefit because it was established beyond doubt from the evidence of the complainants that Shabbir Ahmad had assaulted them when they were ground to take bath in the river and were intercepted and way-laid by the revisionists. Therefore, there was no

illegality holding the revisionists guilty of the assault. The appeal has also rightly been dismissed. It is not a case of miscarriage of justice by incorrect appreciation of the evidence in the case. The revision being devoid of merit, is hereby dismissed.

(Irshad Hussain, J.)

Dated 12.12.2003

Rawat